

Newly submitted claim 36 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 36 replaces original claim 35 directed to a "use" but, reciting that the granules of claim 1 are "further processed", language that appears to be directed a method of preparing the granules to be used in "the decorative coating, finishing or structuring of interior and/or exterior surfaces". As such original claim 35 was properly grouped with the methods of preparing granules recited in claims 21-34. Claim 36, as amended, is directed to a method of applying a decorative coating or structuring and would be restricted to a third method of using group if originally presented.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 36 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Applicant election of species is unclear in that it recites that claims 1-5, 7, 11, 14-34 and 36 are all readable on the elected species. With the election made 10-02-2008, claims 21-34 and 36 are already withdrawn from consideration as drawn to a nonelected group. Claims 15-19 are withdrawn from consideration as drawn to materials of "category a" other than the elected "colorant". Finally, the species "colorant" is not one of the species recited as a member of category "a" in the action of 9-3-2008 but, appears to encompass a plurality of the recited species.

In response to this office letter applicant should clarify the election made with respect to those points outlined above.

The reply filed on 12-15-2008 is not fully responsive to the prior Office Action because of the omission(s) or matter(s) set forth above. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Brunsman whose telephone number is 571-272-1365. The examiner can normally be reached on M, Th, F, Sa; 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1793

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/David M Brunsman/
Primary Examiner, Art Unit 1793

DMB